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No. 86-1080

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
Petitioner,

v.

WILLIAM R. BROCK, Secretary of Labor,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Reply to Brief for the Respondent in Opposition

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REPLY TO BRIEF FOR THE RESPONDENT IN OPPOSITION

Respondent Secretary of Labor ("the Secretary") mischaracterizes the nature of the District of Columbia Workers' Compensation Act (DCWCA), Pub. L. 70-419, 45 Stat. 600 (1928),[1] in general, and specifically the Special Fund, which was created by Congress to encourage the employment of previously injured individuals. This mischaracterization appears to have been done to avoid the problems raised by Section 77 of the WMATA Compact, Pub. L. 89-774, *codified at* D.C. Code Ann. § 1-2431(77) (1981 ed.).[2]

[1] The terms of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) are incorporated into the DCWCA. The statute is codified at 33 U.S.C. §§ 901 *et. seq.*

[2] The Secretary states that WMATA never argued below that Section 77 barred the Special Fund assessment and therefore the issue cannot be raised here. Resp. Br. at 15-16 n. 22. Such is not the case. WMATA mentioned that issue in its Cross-Motion For Summary Judgment before the District Court. *See*

The Secretary argues that the Special Fund is part of the basic compensation provisions of DCWCA. Further, he contends that the DCWCA is a safety statute not barred by WMATA Compact § 77. Resp. Br. at 15-16 n. 22, 17-18. Both assertions are incorrect.

The basic compensation provisions are at 33 U.S.C. §§ 907-909. In return for paying the benefits set out in those sections, the employer is given immunity from any tort action by the employee and arising out of the compensable injury. 33 U.S.C. § 905(a). Benefits provided under the DCWCA to the injured worker are neither increased nor reduced by the possible invocation of the Special Fund provisions by the employer. The purpose of the DCWCA is the same as that of all other workmen's compensation statutes: employees receive payment for work-related injuries without regard to who was at "fault"—and the employer receives immunity from tort actions. *Washington Metropolitan Area Transit Authority v. Johnson*, 467 U.S. 925, 931-32 (1984). The method by which the benefits are paid, whether it be insurance, self-insurance, even the Special Fund, are legislative funding techniques, not the purpose of the statute.

The Secretary's contention that the DCWCA is a safety statute is equally in error. If the DCWCA was

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Court of Appeals Joint Appendix 88-89, 91. At the Court of Appeals, the Secretary admitted that WMATA has a general exemption from regulation. Appellee's Br. 3. In its Petition for Rehearing, WMATA expressly argued that the Court of Appeals decision holding the Special Fund to be a regulatory fee contradicted Congress' intent in Section 77 of the Compact that WMATA be free of conflicting regulations. Court of Appeals Petition for Rehearing 1-2, 6-7. Thus, the issue is properly before this Court for resolution.

a safety statute, then the regulatory exemption of Section 77 of the Compact would not apply. Resp. Br. 16 n. 22. Respondent's brief expands on the opinion of the Court below by making the argument that the DCWCA is a regulatory safety statute; this argument is clearly erroneous. Workmen's compensation statutes are socially motivated, designed to protect the employee injured at work, whatever the cause of that injury. Professor Larson in his treatise correctly defines workmen's compensation statutes as providing a right to compensation, with the only questions being the nature of the injury and whether it was work-connected. 1 A. Larson, *The Law of Workmen's Compensation* § 2.10 (1982). Worker's compensation laws do not tie benefit entitlement to workplace safety. Other federal and state statutes are intended to ensure safety in the workplace.

In *Calbeck v. Travelers Insurance Company*, 370 U.S. 114 (1962), this Court held that the LHWCA (incorporated into the DCWCA) "was designed to ensure that a compensation remedy existed for all injuries sustained by employees on navigable waters, and to avoid uncertainty as to the source, state or federal, of that remedy." *Id.* at 124. Again, the reference point is the certainty of compensation to the injured worker, not the safety of the workplace.

In fact, the only reference to a safety standard in the LHWCA is contained in Section 941. That section authorizes the Secretary to set standards and require certain equipment, to ensure the employee's work environment is safe. If the LHWCA was intended to be a safety statute, this section would be part of the basic provisions of Section 905 that give the employer immunity from tort suits in return for the payment

of benefits without regard to fault to the injured employee. Further, Section 941 itself exempts DCWCA employers such as WMATA from coverage under this section. 33 U.S.C. § 941(g).

In summary, the Special Fund has its own purpose, described more fully in our petition for certiorari at 17-20, which is distinct from the basic purpose of the statute. It is not a safety statute. Thus, Section 77 of the Compact, a vital part of the contract between the signatories and enacted into federal law by the Congress, exempts WMATA from the Special Fund assessment, if it is characterized, as it is by the Court below, as a regulatory or user fee.[3]

A portion of the Secretary's argument that the Special Fund assessment is not a tax merits discussion. The Secretary contends that the lower courts properly held that the Special Fund assessment was a user fee and, therefore, WMATA Compact Section 78 does not exempt WMATA from its payment. Resp. Br. 11-13. The Secretary claims that a positive relationship exists between the cost and benefits to WMATA from the Special Fund even where the assessment rises due solely to other employers' withdrawal from the fund. Resp. Br. at 13. There is no logic to that position. Even assuming, *arguendo*, that the benefit to WMATA includes the indirect benefits cited by the

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[3] The Secretary's argument that Section 66(e) requires Special Fund coverage is totally misplaced. It ignores the history of Section 66, designed to protect the rights of organized transit workers upon takeover of private bus companies, and again mischaracterizes the Special Fund. That Fund has nothing to do with benefits paid covered employees. Payment, or non-payment, of the Special Fund assessment is totally unrelated to that coverage.

Secretary at page 9 of his brief, an increased assessment must be a tax. At the current assessment, WMATA is fully enjoying those benefits. Nothing more is gained by WMATA from an increased assessment. There is no rational relationship between the benefits received and the amount of the assessment. Rather, the assessments are, as the Secretary has admitted, simply a mechanism to spread the costs of the Special Fund. Consequently, the assessment is a tax, not a user fee. *Massachusetts v. United States*, 435 U.S. 444 (1978).

Finally, the Secretary should not be allowed to challenge the statistical basis for WMATA's cost benefit analysis. Resp. Br. 12. All information used in that analysis was derived from information provided by the Department of Labor. Pet. App. 9a n.7, 11a n.9. Thus, any understatement of benefits paid to WMATA claimants is solely the responsibility of the Secretary. The Court should accept the benefit amounts as stated by WMATA.

For the foregoing reasons and for the reasons stated in WMATA's Petition for Certiorari, and the *amicus* brief filed by the Commonwealth of Virginia and the State of Maryland, we ask the Court to grant the Petition.

Respectfully submitted,

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